

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

BA Desarrollos LLC

v.

Argentine Republic

(ICSID Case No. ARB/23/32)

**PROCEDURAL ORDER No. 11
(Rationale for rejecting the Deadline Extension Request)**

Members of the Tribunal

Ms. Deva Villanúa, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Mr. Luis Alberto González García, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Assistant to the Tribunal

Mr. Ethan Shannon-Craven

19 March 2025

WHEREAS

1. On 22 January 2025 the Tribunal received an application from the United States Government [**“United States”**] for access to certain case documents¹ [**“Request for Case Documents”**] in order to assess whether to make a non-disputing Treaty party submission [**“NDP Submission”**]².
2. On 11 February 2025 the Tribunal issued PO No. 9, rejecting the Request for Case Documents but allowing the United States to make an NDP Submission by 21 March 2025, subject to certain conditions.
3. On 5 March 2025 the Tribunal received a further letter from the United States requesting guidance from the Tribunal regarding the relevant provisions of the Treaty and the Parties’ arguments relating to them or, alternatively, the receipt of partial and/or redacted versions of the pleadings [**“Supplementary Request”**]³.
4. On 11 March 2025, in response to the Supplementary Request, Respondent contacted the Tribunal asking that a redacted version of its Memorial on Preliminary Objections and Counter-Memorial on the Merits [**“Memorial”**] be published [**“Publication Petition”**] and requesting that the deadline for the United States to make its NDP Submission be extended [**“Deadline Extension Request”**]⁴.
5. On 12 March 2025 the Claimant provided its comments on the Deadline Extension Request⁴. Also on the same date, Respondent sent a further communication on the same matter⁵.
6. On 13 March 2025, following the publication of PO No. 9, the Tribunal received a further communication from the United States reaffirming its Supplementary Request⁶.
7. On 17 March 2025 the Tribunal issued PO No. 10, rejecting the need to consider a Deadline Extension Request at this time and informing the Parties that a further decision would follow shortly, setting out the Tribunal’s reasoning⁷.

¹ Namely, the Notice of Arbitration, the Parties’ pleadings and the relevant procedural orders.

² United States’ letter of 22 January 2025.

³ United States’ letter of 5 March 2025.

⁴ Claimant’s letter of 12 March 2025.

⁵ Respondent’s letter of 12 March 2025.

⁶ United States’ email of 13 March 2025.

⁷ PO No. 10, para. 61.

DISCUSSION

8. On account of the time that the Tribunal must dedicate to the Publication Petition, Argentina proposes that the Tribunal consider a Deadline Extension Request⁸. Claimant, on the other hand, views a Deadline Extension Request as unnecessary, arguing that any time pressures are the result of the Supplementary Request being made almost three weeks after the United States' original letter and Argentina making its Publication Petition almost one month after the decision in PO No. 9⁹. If, however, the Tribunal decides to grant the Deadline Extension Request, Claimant asks the Tribunal to delay the deadline for submitting its Reply Memorial by an equivalent number of days to allow it to address the NDP Submission¹⁰.
9. Claimant also wishes to highlight the need under ICSID Arbitration Rule ["Rule"] 68(2) to ensure that the United States' participation does not disrupt the proceedings – for this reason it proposed the 21 March 2025 deadline, so as to give it the opportunity to address the NDP Submission in its Reply Memorial¹¹. Respondent, meanwhile, suggests that it does not wish to impact the procedural deadlines, including that of the Reply Memorial¹². This being so, if the Tribunal considers it pertinent for the Parties to comment on the NDP Submission, Respondent believes this should be done simultaneously by both Parties following the submission of the Reply Memorial¹³.
10. As an additional point, Claimant notes that Respondent seems to be making a Deadline Extension Request on the United States' behalf¹⁴. Argentina wishes to clarify that this is not the case; Respondent is merely inviting the Tribunal to consider the merits of an extension on account of its Publication Petition¹⁵. In Claimant's view, allowing the Publication Petition would amount to allowing Respondent to circumvent the Tribunal's ruling in PO No. 9 and an abuse of the procedure provided for under Rule 64¹⁶ – something which the Tribunal retains powers to address¹⁷.
11. As already decided by the Tribunal in PO No. 10¹⁸, Respondent has the right to publish its Memorial (subject to the Tribunal's decision on any disputes between the Parties regarding its redactions). That being said, Argentina has expressly made the link between the Publication Petition and the United States' desire to

⁸ Respondent's letter of 11 March 2025, pp. 1 – 2.

⁹ Claimant's letter of 12 March 2025, pp. 3 – 4.

¹⁰ Claimant's letter of 12 March 2025, p. 4.

¹¹ Claimant's letter of 12 March 2025, p. 3.

¹² Respondent's letter of 12 March 2025, pp. 1 – 2.

¹³ Respondent's letter of 12 March 2025, p. 2.

¹⁴ Claimant's letter of 12 March 2025, p. 3.

¹⁵ Respondent's letter of 12 March 2025, p. 1.

¹⁶ Claimant's letter of 12 March 2025, p. 3.

¹⁷ Claimant's letter of 12 March 2025, fn. 9.

¹⁸ PO No. 10, para. 59.

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“receive partial and/or redacted versions of the pleadings” in its Supplementary Request¹⁹ – even though in PO No. 9 the Tribunal decided *against* providing such access to any of the Parties’ pleadings.

12. Although it is not in the Tribunal’s prerogative to reject the Publication Petition, it is not obliged to allow Rule 64 to be used as a way to sidestep the Tribunal’s decision in PO No. 9 – in fact it seems to have a positive duty to prevent this from occurring, as the relevant part of the working papers makes clear²⁰:

“Some delegations suggested that Rule 64 regulate the timing of requests for publication. Such a matter is usually addressed in the first session but can be raised at any time in the proceeding. The Tribunal retains inherent powers to address abuses of such requests, which need not be addressed in the rules”.

13. If the Tribunal were to grant the Deadline Extension Request purely on the grounds of ensuring that the United States had access to the Memorial prior to its NDP Submission, this would both contravene its previous decision and be tantamount to the Tribunal assisting in undermining Rule 68(3) through a misuse of Rule 64. In any case, allowing the Deadline Extension Request would amount to an unnecessary disruption to the proceedings, inconsistent with the Tribunal’s obligations under Rule 68(2).
14. Absent additional grounds for providing an extension, and on account of the Deadline Extension Request not originating from the United States – the theoretical beneficiary of such a request, the Tribunal does not deem it necessary to grant a Deadline Extension Request at this time.
15. It also does not need to decide on the nature of any observations on the NDP Submission at this juncture, with it being more appropriate to do so once the NDP Submission has been filed and its content is known.

On behalf of the Arbitral Tribunal,

[Signed]

Deva Villanúa

President of the Arbitral Tribunal

Date: 19 March 2025

¹⁹ Respondent’s letter of 11 March 2025, p. 1.

²⁰ “Working Paper # 4: Proposals for Amendment of the ICSID Rules” of 28 February 2020, para. 140.